



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Approval of Agreement Between City of Lodi and Bon Cuisine A La Carte for Concession Operations at Lodi Lake and Other Locations for Recreation Events.

MEETING DATE: February 3, 1999

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council approve an agreement between the City of Lodi and Bon Cuisine A La Carte for concession operations at Lodi Lake and other locations for recreation events for the period of May 1, 1999 to December 31, 2000.

BACKGROUND INFORMATION: The city entered into a two-year agreement with Bon Cuisine A La Carte to provide concession operations at Lodi Lake Park and other locations as needed for recreational activities and events. The agreement dates were from May 1, 1996 to December 31, 1998 with the department receiving 16% of gross receipts, less sales tax.

Staff recommends, based on the performance of Bon Cuisine A La Carte during the above term, to renew the agreement for a period of two years effective May 1, 1999 to December 31, 2000.

FUNDING: None. The city receives approximately \$1,200 per year in revenue from this venture.

Ron Williamson
Parks and Recreation Director

RW/sb

cc: City Attorney
Lou Fugazi, Bon Cuisine A La Carte

APPROVED: _____

H. Dixon Flynn -- City Manager

01/27/99

AGREEMENT
CITY OF LODI
DEPARTMENT OF PARKS AND RECREATION
Concession Operations at Lodi Lake Park and
Other Locations for Recreational Events (Determined Quarterly by Mutual Agreement with
Concessionaire and Director of Parks and Recreation)

THIS AGREEMENT, made and entered into this 3rd day of February, 1999, by and between the CITY OF LODI ("City"), and BON CUISINE A LA CARTE ("Concessionaire").

W I T N E S S E T H:

Concessionaire agrees to operate food cart concessions at Lodi Lake Park and other locations for recreational events (determined quarterly by mutual agreement with concessionaire and Director of Parks and Recreation) in strict compliance with San Joaquin County Health Department standards and requirements for concession operations, and under the following terms and conditions:

Area to be Serviced:

Lodi Lake Park, 1301 West Turner Road, Lodi, CA and other locations for recreational events (determined quarterly by mutual agreement with concessionaire and Director of Parks and Recreation.)

City does hereby grant to Concessionaire the sole and exclusive right/license to vend food, drinks, picnic supplies, souvenirs, and other concession items as approved by the City of Lodi, from food carts at Lodi Lake Park, 1301 West Turner Road, Lodi, CA, and other locations for recreational events (determined quarterly by mutual agreement with concessionaire and Director of Parks and Recreation), beginning May 1, 1999 and ending December 31, 2000.

The City of Lodi reserves the right to waive exclusive license and permit the operation of additional concession activities during the following events:

Annual Boat Races
Fourth of July Celebration/Festival
Major Special Events
All Private Facility Rentals

The City will provide:

1. Garbage receptacles. However, Concessionaire will be responsible for removing, at Concessionaire's own cost and expense, all large boxes, storage containers, and/or packaging materials which may accumulate from equipment or food storage packaging;
2. Maintenance of the general property, unless abuse and lack of general care is apparent, at which time the cost and expenditures for repairs and maintenance shall be borne by the Concessionaire.

CONCESSION OPERATION CONDITIONS:

1. The length of the contract shall be from May 1, 1999, and ending at midnight on December 31, 2000.
2. Concessionaire agrees to maintain in full force during the term hereof, a policy of general liability insurance which contains an Additional Named Insured Endorsement naming the City of Lodi, its officers, agents, and employees as Additional Insureds, and under which the insurer agrees to indemnify and hold the City of Lodi harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal or bodily injuries, including death, sustained in accidents occurring in or about the demised premises; where such accident, damage, or injury, including death, results or is claimed to have resulted, from any act or omission on the part of Concessionaire or Concessionaire's agents or employees in the implementation of this Agreement. The minimum limits of such insurance shall be \$1,000,000 general aggregate. In addition to the Additionally Named Insured

Endorsement on Concessionaire's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers, agents, and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said bodily injury and property damage insurance containing the above-stated required endorsement shall be delivered to the Risk Manager after the issuance of said policy, with satisfactory evidence that each carrier is required to give the City of Lodi at least 30 days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement. The insurance certificate must state on its face or as an endorsement, the name of the Concession that it is insuring. If there has been no such delivery within forty-eight (48) hours prior to the commencement of this Agreement, this Agreement shall be null and void. All requirements herein provided shall appear either in the body of the insurance policy or as endorsements and shall specifically bind the insurance carrier. This paragraph and all other provisions of this Agreement shall apply and be construed as applying to any subtenant of Concessionaire, in the event any such subtenant is allowed under the provisions of paragraph 13 of this agreement.

Notwithstanding other provisions contained in this Agreement, the City Manager is granted the right to immediately terminate the Agreement upon failure on the part of the Concessionaire to keep in full force and effect during the entire term of the agreement, the insurance as set forth in this section.

3. Concessionaire shall, prior to opening for business each year of said Agreement (by April 1 of each year), furnish a "Products and Price Schedule" and shall follow the products and price schedule as negotiated between the City Manager or his representative and Concessionaire.
4. Concessionaire shall provide all equipment and products to operate said concessions.
5. Concessionaire shall pay 16% of gross receipts excluding sales taxes to the City of Lodi, which payments shall be due on the tenth (10th) calendar day of every month for sales of the previous month. If said percentage has not been paid by the due dates, there shall be a penalty of five percent (5%) per day for any amounts not paid, and owing to

the City. The Concessionaire shall keep accurate records and books of accounts of all purchases and sales, and does hereby give to the City or its authorized agents, the right to examine and audit said books at any time City desires. The Concessionaire shall complete monthly records on forms provided by the City, and these reports shall accompany gross receipts payments, provided to the City by the tenth (10th) calendar day of each month while concessions are in operation.

6. The dates and times of operation shall be as follows:

LODI LAKE OPERATIONS:

- A. Concessionaire shall operate from May 1 to September 30 each year, on weekends between May 1 and Memorial Day, daily from Memorial Day through Labor Day, and on weekends between Labor Day and September 30. Days of operation may be negotiable to realize optimum operating efficiencies and profitability while meeting the needs of park guests.
- B. The hours of operation of the Concession shall be from 11:00 a.m. to 6:00 p.m. each day of operation, unless extended hours are mutually agreed to by City and Concessionaire.

OTHER LOCATIONS FOR RECREATIONAL EVENTS/ACTIVITIES:

Dates and times of operation to be mutually agreed upon by the concessionaire and Parks and Recreation Director on a quarterly basis.

7. Concessionaire agrees to obtain at his/her own expense, any and all permits and licenses which may be required by law or ordinance in conducting the concessions, and to pay any and all taxes and assessments which may be assessed against him or her for whatever purposes in the operation of said concessions.

8. Maintenance:

Concessionaire shall keep the food carts and the immediate surrounding areas in clean and presentable condition at all times and follow the strictest of sanitary conditions, and any State and local ordinances applicable to the business to be conducted.

Concessionaire shall be responsible for daily removal from the premises all packaging materials (cartons, boxes, cases) in which food and beverage items are packed. Concessionaire shall be responsible to give the City written notice of any maintenance problems.

9. The rights granted hereunder for concession sales at the identified park and other locations for recreational events (determined quarterly by mutual agreement with concessionaire and Director of Parks and Recreation), shall be exclusive to Concessionaire, save and except any special events (e.g. boat races, Fourth of July events, major special events, etc.), conducted outside the normal course of operation at the above described locations, and of which the City Manager or his representative shall give concessionaire five (5) days advance notice.

Concessionaire will be given first consideration for vending at said special events upon agreement of event sponsor. (No food or product rights without agreement of sponsoring party.) Concessionaire shall pay to the City of Lodi in accordance to section 5 of this agreement for special event vending.

10. Concessionaire is aware that a Possessory Interest Tax is or may be charged each year by the County Assessor for the use of the facilities and that payment of this tax is the responsibility of the vendor.
11. The Parks and Recreation Director reserves the right to approve or disapprove any employee or operator of said concession stand on a basis of such considerations as dress, general cleanliness, and working relationship with the public and staff, as needed to successfully vend food for day-to-day operations, tournaments or special events or activities. (The City will counsel and coordinate this action with Concessionaire manager).

All concession employees will be dressed in like uniforms, white or other light color as approved by the Parks and Recreation Director, and be identified, by name, as employees of Concessionaire. All concession employees shall wear appropriate head attire to meet San Joaquin County Health Department requirements, and shall be clean at all times.

12. The City reserves the right to enter upon the premises at any reasonable time to inspect the operation and equipment thereon, or for any other purpose.
13. Concessionaire shall not have the right to sell, mortgage, assign or sublet the contract/agreement or any part thereof without the prior written consent of the City Manager or his representative. A breach of this condition shall automatically terminate any contract or agreement between City and Concessionaire. (In the event that Concessionaire is unable to provide required concession products and/or services for special events, the City shall have the right to secure said services and/or food and beverage products, and to negotiate any and all agreements or contracts to provide said services and/or food and beverage products for sale to the public, and all proceeds therefrom shall be forfeited to the City. Said original Concessionaire shall have first right of refusal to participate in said negotiations.)
14. The agreement/contract may be terminated by written agreement of either party hereto without cause upon thirty (30) days' written notice to the other party. Such notice shall be delivered to the City Manager's office, City Hall, 221 West Pine Street, Lodi, or to the Concessionaire at a premises which is subject to this agreement.
15. Concessionaire shall be required to provide to the City upon the signing of this agreement a Fidelity Bond in the amount of \$1,000.
16. If Concessionaire defaults in any of the terms contained herein, the Concessionaire's agreement to provide service as specified herein shall terminate upon failure of Concessionaire to correct the default within thirty (30) days of receiving written notice thereof from the City. Upon any termination thereof, Concessionaire agrees to quit and surrender possession peaceably and City shall have the right to remove Concessionaire and all others occupying through or under this agreement. Under such termination of agreement the Concessionaire's performance bond shall be forfeited to the City for payment of all outstanding debts owed by Concessionaire to the City, including monthly payment(s) and any and all reimbursements for repairs or replacement of the facilities.
17. In the event that either party brings an action under this Agreement for the breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs, whether or not such action is prosecuted to judgment.
18. At the City's discretion, according to the decision of the City Manager upon the recommendation of the Parks and Recreation Director, a two year extension of this agreement beyond the December 31, 2000 term may be considered, based upon the performance of concessionaire during the initial term of this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands the day and year first hereinabove written.

CITY OF LODI, a municipal
corporation

CONCESSIONAIRE,

H. DIXON FLYNN
City Manager

LOUIS B. FUGAZI

ATTEST:

ALICE M. REIMCHE, City Clerk

Approved as to Form:



RANDALL A. HAYS, City Attorney

**Concession Operations at Lodi Lake Park
and Other Locations**

**FIDELITY BOND
(Faithful Performance)**

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the CITY OF LODI, a municipal corporation, hereinafter designated "Obligee", and Louis B. Fugazi, dba Bon Cuisine Ala Carte, hereinafter designated "Principal", have entered into, each with the other, a contract for the operation of a food cart concession at Lodi Lake Park and other locations for recreational events, which contract is on file in the office of the Parks and Recreation Director of the City of Lodi, reference to which is hereby made, and which is hereby incorporated herein and made a part hereof, and

WHEREAS, said contract is for a term beginning May 1, 1999, and ending at midnight on December 31, 2000, unless extended for an additional two years, pursuant to paragraph 18, and

WHEREAS, said Principal has agreed and is obligated by the terms of said contract to do and perform certain work, for a period beginning May 1 and ending September 30 of each year of the contract term, and to discharge and perform and carry out certain other obligations in said contract in accordance with the terms and provisions of said contract, with the plans and specifications adopted therefor and incorporated therein and now on file with and in the office of the Parks and Recreation Director of the City of Lodi and with all applicable ordinances, rules and regulations of the City of Lodi, and

WHEREAS, said Principal is required under the terms of said contract to furnish a Fidelity bond as a guarantee of payment of the percentage payment to be made to obligee pursuant to the contract.

NOW, THEREFORE, we, said Principal, as Principal, and Louis B. Fugazi, an Individual dba Bon Cuisine Ala Carte, duly organized and existing under the laws of the State of California, and duly authorized to transact business in the State of California, as Surety, are held and firmly bound to said Obligee in the sum of One Thousand and no/100 Dollars (\$1,000.00), lawful money of the United States of America, to be paid to said Obligee, for the payment of which sum well and truly to be made we and each of us bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, if the above-bounden Principal, or Principal's successors or assigns, shall in all things stand to and abide by and well and truly keep and perform each and all of the covenants, terms, conditions and obligations in said contract on the Principal's part to be kept and performed, and any and all alterations thereof made as therein provided at the time and in the manner therein specified, and shall release, defend, hold harmless and indemnify Obligee and its officers, employees and agents as therein

specified, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the plans and specifications accompanying the same shall in anywise affect its obligation on this bond, and it hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the plans and specifications.

Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by said Principal with proper authority, and Surety hereby waives any defense which it might have by reason of any failure of Principal to properly execute this bond.

In the event suit is brought upon this bond and judgment is recovered by Obligee, Principal and Surety, jointly and severally, shall be liable to Obligee for court costs and for reasonable attorney's fees.

IN WITNESS WHEREOF, this bond has been executed by the aforesaid Principal and Surety on _____.

SURETY:

PRINCIPAL:

By: _____

Agent

By: _____

Address

Address

APPROVED AS TO FORM:



Randall A. Hays, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____,
Date Name, Title of Officer - e.g., "Jane Doe, Notary Public"

personally appeared _____,
Name(s) of Signer(s)

____ personally known to me - OR - ____ proved to me on the basis of
satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

**CITY OF LODI
RISK TRANSFER REQUIREMENTS FOR LEASE OR USE OF CITY FACILITIES**

The City of Lodi has made arrangements with the American Casualty Company to provide commercial general liability coverage for various types of special events which may be permitted on City property or rights-of-way. This inexpensive insurance program has been designed to meet the special needs of the City. It will be mandatory in most cases, for any individual party or group to purchase this coverage as a condition for conducting their event on City facilities.

If insurance coverage is not purchased from the program described above, the following Risk Transfer Requirements must be met.

1. Any individual party or group (hereinafter called Lessee) leasing, renting or otherwise using City of Lodi facilities, is required to carry a policy of Comprehensive General Liability insurance, and must complete a formal application or permit. Processing of applications is handled by the department responsible for the facility.
2. A duplicate or certificate of insurance shall be delivered to the City TWO WEEKS prior to the use of City facilities.

NOTE: Lessee agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is as lease consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Govt. Code < 810 et seq.).

"Claims made" coverage requiring the insured's to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

3. Each insurance certificate shall contain satisfactory evidence that each carrier is required to give the City of Lodi immediate notice of the cancellation or reduction in coverage of any policy during the effective period of the use of the City's facilities.
4. Each insurance certificate shall state on its face or as an endorsement, the location or and a description of the function that it is insuring.
5. If the City has not approved the insurance certificate and appropriate application or permit prior to the commencement of any portion of the function, the City's facilities will not be allowed to be utilized, and any contract or agreement entered into will become null and void.
6. Provided the lease agreement or contract does not prohibit a subtenant, all provisions of these requirements shall apply to and be construed as applying to any subtenant of the Lessee.
7. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.
8. In each and every instance, the City of Lodi must be named as an additional insured on the face of the insurance certificate or as an endorsement attached to the insurance certificate. (The City of Lodi, its agents, officers, and employees, must be named the additional insured, not Hutchins Street Square, Parks and Recreation, or another individual or department).

9. The address of the City of Lodi must be shown along with number 8 above, (i.e. Additional Insured, City of Lodi, its agents, officers, and employees, 221 W. Pine Street, Lodi, Ca. 95240) This must be the street address NOT the post office box.
10. In addition to the Additional Names Insured Endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language or reasonable facsimile:
"Such insurance as is afforded by the endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."
11. The combined single limits for bodily injury and property damage shall not be less than \$1,000,000 each occurrence. If alcohol is to be consumed or sold at the Lessee's event, then liquor liability coverage must be provided.
12. The Policy effective date and expiration date must coincide with and span the date(s) of the event being insured.
13. If the limits of coverage are not the amounts specified in Section 10 and 11 above and/or if the City is not named as an additional insured on the insurance certificate, not in conformance with the requirements of paragraph 2 above, the City will not accept the insurance certificate, and a corrected certificate must be furnished to the City prior to any use of City facilities.
14. If a corrected insurance certificate and appropriate application or permit is not received by the City of Lodi prior to the use of City facilities, the City will not allow the facilities to be used, and any agreement or contract entered into will become null and void.

RESOLUTION NO. 99-14

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE
AGREEMENT BETWEEN THE CITY OF LODI AND BON CUISINE A LA
CARTE FOR CONCESSION OPERATIONS AT LODI LAKE PARK AND
OTHER LOCATIONS FOR RECREATION EVENTS, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

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BE IT RESOLVED that the Lodi City Council does hereby approve the Agreement between the City of Lodi and Bon Cuisine A La Carte for Concession Operations at Lodi Lake Park and other locations for recreation events; and

BE IT FURTHER RESOLVED that the term of this Agreement will cover the period of May 1, 1999 through December 31, 2000; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the agreement on behalf of the City of Lodi.

Dated: February 3, 1999

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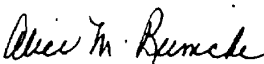
I hereby certify that Resolution No. 99-14 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 3, 1999 by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Mann, Nakanishi, Pennino
and Land (Mayor)

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


ALICE M. REIMCHE
City Clerk